obvious administering the claimed percutaneous absorption composition for at least the following reasons.

The Office Action asserts that Nichi teaches externally applying a cerebral function normalizing agent containing 3-methyl-1-phenyl-2-pyrazolin-5-one because Nichi discloses that this "agent is applicable to treatment of cephalic external wounds." See Office Action at page 3 and Nishi at abstract. The Office Action appears to reason that treating an external wound requires topically administering an active agent. See Office Action at page 3. This is not so because there are many examples in the art of treating external wounds through non-topical administration of an active agent. And Nishi does not disclose "a topical drug formulation comprising 3-methyl-1-phenyl-2-pyrazolin-5-one," contrary to the Office Action's assertion (emphasis added). Id.

Instead, Nishi discloses that a cerebral function normalizing agent containing 3-methyl-1-phenyl-2-pyrazolin-5-one (or salt thereof) "can be orally administered . . . [and] is applicable to treatment of cephalic external wounds, cerebral arteriosis, cerebral infarction or cerebral angiopathy, etc." See abstract. Nishi cannot be fairly considered to disclose a percutaneous absorption composition comprising 3-methyl-1-phenyl-2-pyrazolin-5-one because percutaneous absorption compositions are not prepared for oral administration.

The Office Action only relies on the English-language abstract of Nishi. However, as evidenced by the English-language translation of the entire specification of Nishi, Nishi only discloses orally, intravenously, and intrarectally administering a composition comprising the cerebral function normalizing agent to treat certain enumerated conditions. See Nishi Translation at page 4, lines 23-31 and page 5, lines 17-28; see also U.S. Patent No. 4,857,542 and EP 0 208 874 A1 (each corresponding to Nishi and previously submitted in the May 11, 2006 Information Disclosure Statement, which has been considered by the Examiner).

The Office Action also asserts that it would have been obvious to one of ordinary skill in the art to combine Nishi and Koide because both allegedly teach topical formulations "to improve transdermal delivery of the active agent." See Office Action page 4. As discussed above, Nishi does not disclose topical formulations and, thus, the Office Action's rationale for why an ordinarily skilled artisan would have combined the references is without basis, rendering the rejection improper. Additionally, Koide, which the Office Action applies for allegedly disclosing other components of percutaneous topical formulations (see page 4), fails to cure the above-noted deficiencies of Nishi.

For at least these reasons, the combination of Nishi and Koide would not have rendered obvious claim 11. Claims 12-15 variously depend from claim 11 and, thus, would not have been rendered obvious by the combination of Nishi and Koide for at least the same reasons. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

II. Unity of Invention

None-elected claims 1-10 share the claimed percutaneous absorption composition as a common technical feature with claim 11. Because the claimed percutaneous absorption composition defines a contribution over the prior art for at least the reasons discussed above, unity of invention exists between claims 1-15 and, thus, the Restriction Requirement is improper. Accordingly, Applicants respectfully request withdrawal of the Restriction Requirement and rejoinder and examination of claims 1-10.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

James A. Oliff
Registration No. 27,075

Matthew C. Barthalow
Registration No. 60,323

JAO:MCB/amw

Attachment:
English-language translation of JP 61-263917

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OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

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